



The Comptroller General  
of the United States

Washington, D.C. 20548

Ahearn

## Decision

Matter of: Sterling Services, Inc.; Trim-Flite, Inc.

File: B-229926.5; B-229926.6

Date: October 3, 1988

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### DIGEST

1. Contracting agency's cost realism analysis involves the exercise of informed judgment, and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis. Reasonable basis is provided by determination that awardee's costs were analyzed based on work to be performed, independent government estimate, and other proposals submitted.
2. Protest that agency failed to hold meaningful discussions is without merit where agency sent protester questions sufficient to lead protester into areas of deficiency, protester was given an opportunity to revise its proposal, and subsequent changes in government cost estimate did not change the substance of the deficiencies.
3. General Accounting Office (GAO) will not object to the composition of an agency's technical evaluation panel absent a showing of possible fraud, bad faith, or conflict of interest. Mere speculation as to possible bias does not carry the protester's burden of proof and GAO will not conduct an investigation to substantiate the protester's allegations.

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### DECISION

Sterling Services, Inc., and Trim-Flite, Inc., protest the award of a contract to Ferguson-Williams, Inc., under request for proposals (RFP) No. DACW01-87-R-0056, issued by the Army Corps of Engineers for operation and maintenance of government-owned facilities at Lake Sidney Lanier, Georgia. Sterling argues that the awardee offered an unrealistic price and the agency failed to hold meaningful discussions. Trim-Flite argues that the evaluation board was biased in favor of selection of the awardee. Both protesters request reimbursement of their proposal preparation and protest costs.

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We deny the protests and deny the claims for costs.

The RFP, a total set-aside for small businesses, contemplated a 1-year (plus 2 option years) cost-plus-award-fee contract for janitorial services. Offerors were to submit separate technical, management, and cost proposals, with cost to be evaluated (not scored) for completeness, reasonableness, and realism. The cost realism analysis was to determine the extent to which cost proposals were comparable to the undisclosed government estimate, and to verify that the total estimated costs and fees were commensurate with the corresponding technical effort, contract requirements, and cost risks. The RFP specifically instructed that the composite cost per technical manhour proposed should compare favorably with historical cost data. Award was to be made to the responsible offeror whose offer was rated most advantageous to the government, technical, management, cost, and other factors considered.

Five proposals were received and evaluated. Discussions were conducted and best and final offers were received. Trim-Flite was determined to be the successful offeror upon completion of initial evaluations. However, after protests to the agency and this Office, the Corps revised their estimate and reevaluated proposals three subsequent times. As described in our decision, Sterling Services, Inc., B-229926.2, Aug. 19, 1988, 67 Comp. Gen. \_\_\_\_\_, 88-2 CPD ¶ \_\_\_\_\_, Trim-Flite was again determined to be successful after the second and third evaluations. However, after the fourth evaluation was completed, Ferguson-Williams was determined to be the successful offeror. Award was made on June 30, 1988, after the agency made a determination to proceed with award prior to resolution of the protest, based on urgent and compelling circumstances. See 31 U.S.C. § 3553(c)(2) (Supp. IV 1986).

#### STERLING PROTEST

##### Cost Realism

Sterling Services first contends Ferguson-Williams' proposed cost of \$1,406,117 (base year proposed cost without fees) should not have been determined realistic, as it is below the \$1,500,000 cost incurred by the protester to operate Lake Lanier in 1987.<sup>1/</sup> Instead, the protester advocates that a realistic cost offer should have been more than its own 1987 cost due to increased labor costs and added work

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<sup>1/</sup> Ferguson-Williams' proposed base-year cost with fees was \$1,504,546.

under the current solicitation. Similarly, the protester maintains that Ferguson-Williams' offer is unrealistic as it is below the government estimate of \$1,642,498.

An agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting its cost realism analysis. Rather, the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess the realism of cost and technical approaches and must bear the difficulties or additional expense resulting from a defective cost analysis. We limit our review of the contracting officer's judgment to determining whether the cost evaluation was reasonable, i.e., not arbitrary. Fairchild Weston Systems, Inc., B-229568.2, Apr. 22, 1988, 88-1 CPD ¶ 394. We have specifically approved the use of government cost estimates in evaluating cost realism. See Continental Maritime of San Francisco, Inc.--Reconsideration, B-220632.2, Apr. 9, 1986, 86-1 CPD ¶ 351.

We find that the Corps' analysis here was reasonable. The record (portions of which were not released to the protester and which we have reviewed in camera), indicates that the agency conducted its cost analysis by establishing an estimate based on how many labor hours it should take to complete contract performance, with consideration for each offeror's proposed organization and methodology. First, Ferguson-Williams' cost information was evaluated to insure that it was consistent with the work to be performed and that all cost elements were fully supported by appropriate data. Ferguson-Williams' proposed cost without overhead and fees, \$1,326,526, was then compared to the most current government estimate of \$1,369,890, without overhead and fees, indicating that the awardee's price for the services themselves was only approximately 3 percent less than the government estimate. Ferguson-Williams' separate cost elements were also compared to, and found to be consistent with, the corresponding elements of the government estimate.

The record also indicates that the agency specifically determined that the awardee's lower cost per technical manhour (\$13.53, compared to \$15.26 for the government estimate), was largely due to the awardee's proposal of a higher number of man-years (53 versus the 52 man-years in the government estimate), which the agency considered reasonable and acceptable given the organizational makeup proposed by Ferguson-Williams. Finally, the Corps compared Ferguson-Williams' offered cost to the other cost proposals received.

The contracting officer based her determination of the reasonableness and realism of Ferguson-Williams' offered price on these three separate analyses, and thereafter also analyzed the proposals on a price-per technical evaluation point basis (i.e., total proposed cost divided by the number of technical evaluation points). The ranking from this analysis for the three most favorably evaluated offerors was as follows:

<u>Offeror</u>	<u>Total 3-year Cost</u>	<u>Technical Point Score</u>	<u>Price-Per Point</u>
Ferguson-Williams, Inc.	\$4,558,457	\$86.98	\$52,408
Trim-Flite	4,723,797	85.75	55,088
Sterling Services, Inc.	5,339,656	80.68	66,183

The Corps considered Ferguson-Williams' ranking as the lowest price-per point to further support the determination that Ferguson-Williams' cost proposal was the most advantageous to the government. Given this clear evidence that the Corps undertook a fairly detailed analysis of Ferguson-Williams' proposed costs, we find no basis for concluding that this determination was unreasonable.

We do not view Ferguson-Williams' proposed cost as per se unrealistic solely on the basis that it is 3 percent lower than the government estimate; rather, as did the Corps, we recognize that an offeror may propose an operation that reasonably may be found capable of performing the work at a lower cost than the government estimated. For the same reason, the protester's cost experience under the prior year's contract is not necessarily an accurate baseline for another offeror's likely performance costs. Regarding the additional work the protester alleges was added to the scope of the contract from its incumbent contract, the agency responds that the work, involving navigational markers, is not of such a magnitude as to make a significant difference in price. The protester does not take issue with this explanation.

The protester's real quarrel concerning cost realism appears to be its continued disagreement with the government's cost estimate and, specifically, the level of effort required for the contract. The protester repeats its contention from its previous protest that the government's cost estimate does not realistically reflect the cost of operating Lake Lanier under appropriate wage rates and classifications. (While the government increased its estimate to the now current \$1,642,498 for the base year, the protester believes that a more realistic estimate should

be \$1,812,000, close to its offered price of \$1,799,638.) We found this allegation to be without merit in our previous decision, Sterling Services, Inc., B-229926.2, supra. In any event, while the protester believes its offered higher level of effort was necessary for operation of Lake Lanier, the agency specifically notified the firm during discussions that its level of effort (56 man-years, compared to the government estimate of 52) was excessive.

#### Meaningful Discussions

Sterling contends that discussions concerning the firm's proposal were not meaningful because they were based on the original erroneous government estimate that subsequently was revised three times by the Corps. Sterling cites two specific areas where it believes it could have corrected its proposal had new discussions been held based on the revised estimate; its proposal of one more on-site manager and two more grass-cutting employees than included in the Corps' revised estimate. Sterling believes its proposal in these areas reflected the original estimate, on which discussions were based.

The Federal Acquisition Regulation (FAR) requirement for meaningful discussions with all offerors in the competitive range (FAR § 15.610(c)(2)), does not mean that offerors are entitled to all-encompassing discussions. Northwest Regional Educational Laboratory, B-222591.3, Jan. 21, 1987, 87-1 CPD ¶ 74. Rather, agencies are only required to lead offerors into areas of their proposals needing amplification. Id. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our Office will review the agency's judgments only to determine if they are reasonable. Id.

Sterling is correct that discussions were held before the original estimate had been revised. There is no indication, however, that the subsequent revisions in any way invalidated those discussions. First, there is no clear evidence that the Corps' initial estimate was ever revised in both areas cited by the protester; it appears from information submitted by the protester in connection with our prior decision (Sterling Services, Inc., B-229926.2, supra), that the initial and revised estimates both included only one on-site manager. In any event, regardless of the precise number of personnel allocated by the Corps to certain functions, the agency submitted several written questions to Sterling during discussions expressing concern regarding supervision and labor hours. Specifically, the agency raised its concern that Sterling's supervision in its proposal appeared "heavy," and also advised Sterling that

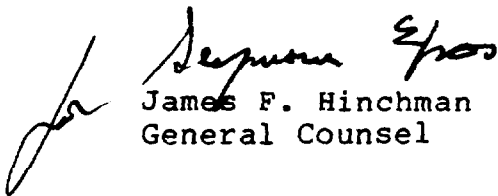
its master plan was unreasonable since it showed a higher amount of manhours than the agency believed were needed to accomplish the work. The agency specifically directed the protester to reevaluate excess labor hours to determine their necessity. We think these questions were sufficient to lead Sterling into both of the areas the Corps deemed overstaffed; the Corps would not have been required to help Sterling reduce its manpower further in these areas by disclosing the staffing on which the estimate was based.

#### TRIM-FLITE PROTEST

Trim-Flite alleges that the evaluation board was improperly biased in favor of selecting Ferguson-Williams because two members of the board were involved in administering on-going Ferguson-Williams contracts. Trim-Flite requests that we investigate the matter.

We have held that the composition of technical evaluation panels is within the discretion of the contracting agency, and we will not review the composition absent a showing of possible fraud, bad faith or conflict of interest. Fairchild Weston Systems, Inc., B-229568.2, supra (fact that technical evaluation panel members were involved in administering on-going contracts of awardee does not show bias toward awardee). The protester does not make such a showing; Trim-Flite does not challenge the correctness of the evaluation, and does not allege any specific act of bias on the part of any evaluator. We will not attribute bias to an evaluation panel simply on the basis of inference or supposition. Burnside-Ott Aviation Training Center, B-229793, Mar. 4, 1988, 88-1 CPD ¶ 236. Further, we do not conduct investigations to substantiate a protester's allegations. Fayetteville Group Practice, Inc., B-226422.5, May 16, 1988, 88-1 CPD ¶ 456.

Since we deny the protests, both protesters' requests for the cost of pursuing their protest and proposal preparation costs are denied. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(e) (1988).

  
James F. Hinchman  
General Counsel